BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In re Applications of AMERITECH CORP., Transferor, and SBC COMMUNICATIONS, INC., Transferee for Consent to Transfer Control	CC Docket No. 98-141

REPLY COMMENTS OF SPRINT COMMUNICATIONS COMPANY L.P. ON PROPOSED CONDITIONS

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Sprint Communications Company L.P. ("Sprint"), by its attorneys, hereby files its reply comments on the conditions proposed by SBC Communications, Inc. ("SBC") and Ameritech Corporation ("Ameritech") for the pending application. Sprint respectfully submits that the record unambiguously demonstrates that SBC/Ameritech's proposed merger and merger conditions are anticompetitive and contrary to the public interest and must therefore be rejected *in toto*.

I. Introduction and Summary

The search for conditions grew out of the record's unambiguous showing that this merger is illegal. The merger would eliminate competition between the merger parties, it would give the merged entity increased incentives and ability to discriminate, and it would impair the effectiveness of regulatory oversight by diminishing the valuable tool of benchmarking. In recognition of these fundamental problems, the Chairman invited the merger parties to negotiate with the staff and to provide a set of commitments that would compensate for them. Unfortunately, SBC chose not to offer anything of value. Worse yet, it cynically distorted the process to its own anticompetitive ends, so that the "conditions" became harmful. The Commission must not acquiesce in this. Indeed, it is no overstatement to observe that the Commission's approval of SBC's proposed conditions here will be a key determinant in forsaking competitive structures for new, innovative services as well as for plain old telephone service.

As the commenters in this proceeding have recorded, the Commission has three options. First, and as Sprint has consistently urged, the Commission should unconditionally deny the proposed merger because no set of conditions can eliminate the competitive harm it will cause. Second, the Commission can direct the staff to craft an entirely new set of conditions that will in fact begin to address and at least minimize the very real concerns here. But under no

circumstance can the Commission proceed with the SBC proposal, even in some modified form. To make it unmistakably clear: *The public would be better off with the FCC approving this merger with no conditions than to approve it with SBC's proposed conditions.*

The overwhelming import of the comments submitted to date verifies this. Indeed, the record really permits no other conclusion. The specific problems with the piece parts of SBC's package are explicated in full by the commenters.[1] As Sprint sets forth in summary fashion below and in Appendix 1, virtually every SBC condition has been shown wanting. Sprint is most concerned with those relating to advanced services, and has provided a brief overview of the record on this specific set of issues. There are significant issues of process as well, and Sprint discusses these below.

II. The Process Issues Alone Dictate Further Consideration and Proceedings.

There are three procedural/process issues that the record discloses and that must not be ignored. First, the third party commenters uniformly have expressed their dismay at the "closed door" process used here, and SBC's and Ameritech's wanton disregard of the FCC's *ex parte* rules. As Sprint, AT&T and others have noted, not a single *ex parte*

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[1] While some of the comments address only a subset of the conditions, it is clear that their silence on the remaining conditions does not reflect approval or agreement.

letter filed by the merger parties during the negotiation process revealed any information of any value as to what was being discussed. The procedural irregularities unsurprisingly wrought substantive mistakes. *See* AT&T Comments at 5; ALTS Comments at 2 n.2.

Second, parties have expressed grave concern for the harm the SBC proposal could do outside of this proceeding. As Sprint noted in its comments, SBC's proposals will be used by it in an effort to foreclose decisions on the merits of other proceedings, including pending FCC rulemakings, future Section 271 applications, and state proceedings establishing entry conditions. *See* CompTel Comments at 5-6; ALTS Comments at 5-6 & n.11; ICG Comments at 3-4. This is not mere speculation: several occurrences of this have been documented on the record already. *See* Sprint Comments at 18 & App. 2 (describing Missouri PUC proceeding in which SBC tried to use proposed condition as precedent for loop conditioning costs); AT&T Comments at 19-20 (describing Ameritech's efforts in Michigan to dissuade PSC from adopting more comprehensive performance measures based upon its proposal herein, and GTE's attempt to use the proposal as precedent for performance measures in California).

Third (and relatedly), the pendency of the proposal and its possible adoption has created enormous jurisdictional confusion. State public utility commissions have come forward to express their concerns for the interplay between state-prescribed rules and penalties and those offered in

the SBC proposal. Though the SBC proposal recognizes the existence of a jurisdictional question (Proposal ¶ 69), it relies on vague, undefined terms such as "substantially related" and "cumulative" to attempt to resolve the issue. The jurisdictional questions raised by these conditions generally, and paragraph 69 specifically, introduce additional uncertainty and thereby provide a vehicle for SBC to attempt to minimize both its state and federal obligations.

The record reflects a significant concern that the proposal could have an undesired preemptive effect on state laws. The Indiana Utility Regulatory Commission ("Indiana URC") discourages the Commission from adopting the language in paragraph 69 because "it could be erroneously construed as setting a federal ceiling on the conditions that SBC/Ameritech will accept at the state level." Indiana URC Comments at 10; *see also* ICG Communications, Inc. Comments at 3 ("SBC/Ameritech will do its utmost to convince state and federal regulators that what it is required to do here represents a ceiling on what can be reasonably required in the future proceedings."). According to Indiana, such a result would impair the state's ability to adopt a set of coherent conditions during its pending merger review, and will cause problems in other proceedings before it. *See* Indiana URC Comments at 10-11. Ohio similarly explains that it may have to reconsider its approval of the merger in the event that the stipulation it negotiated were to be

preempted. *See* Ohio PUC Comments at 4-5.[2] The Wisconsin commission also filed to seek assurances that application of the proposed conditions will not supersede state authority under the Communications Act. Wisconsin PSC Comments at 4. And the Texas Office of Public Utility Counsel ("TOPUC") argues that SBC must continue to comply with state collocation requirements notwithstanding the proposal's collocation obligations. TOPUC Comments at 5.[3]

The concerns recorded in this proceeding are echoed in state proceedings. In the recent merger hearings before the Illinois Commerce Commission, participants have struggled to understand and resolve the precise interplay between the differing federal/state penalty caps as well as differences in the substantive obligations created at the federal and state levels. The Ohio commission correctly noted that "[i]f there is a direct conflict between an FCC-imposed merger condition and a State-imposed merger condition, then

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[2] "[I]t is only fair that the conditions resulting from the Ohio proceeding be effective independent of any FCC-imposed conditions. Conversely, any FCC-imposed conditions must fully benefit Ohio consumers without being diminished or altered." Ohio PUC Comments at 3.

[3] The Kansas State Corporation Commission ("KCC") identifies other procedural and jurisdictional ambiguities with the proposal. For instance, KCC is concerned that the proposal may preempt its decision to preclude SWBT from charging competitors for the submission of manual orders because "it was found that the need for manual access was generally a result of SWBT's OSS [failings] and not because of a CLEC preference for manual ordering." KCC Comments ¶ 5; *see also* Arkansas Public Commission Comments at 1 (seeking an additional condition to assist in its implementation of the proposal).

SBC/Ameritech obviously will only be able to comply with one of the conditions and not both." Ohio PUC Comments at 6. Such a dichotomy gives new meaning to the terms "pick and choose."

Even assuming the Commission can confidently announce an intention not to preempt, there may be some areas where such an effect is either unavoidable or where multiple regulations negate one another's effectiveness. For example, a separate subsidiary structure for advanced services cannot practicably be ignored by state jurisdictions, or altered in some way by others, without resulting in confusion, inefficiency, and, very likely, fundamental inconsistencies.

The confusion in the record concerning jurisdictional issues represents only a subset of the confusion surrounding the proposal generally. It is in large measure a function of a process that allowed the regulated firm to craft in the first instance its own regulations. SBC will undoubtedly seek to exploit and, to a large measure, succeed in exploiting these vagaries to its own benefit by claiming, as original author, a superior ability to interpret ambiguous terms. If anything, the result will make the futility of the Bell Atlantic/NYNEX conditions look successful by comparison.

III. The Advanced Services Conditions Will Serve Only to Extend SBC's POTS Monopoly to New Services.

As discussed in Sprint's comments, the most troubling aspect of SBC's proposal is its attempt not only to preserve but to extend its POTS monopoly through the proposed conditions regarding advanced services. First, the proposed scope of loop pre-qualification information is incomplete and is geared towards ensuring that competitors do not enter a market until SBC has deployed its own xDSL offerings. Second, the proposed loop conditioning charges are anticompetitive, inconsistent with the Commission's TELRIC pricing methodology, and serve as barriers to entry. Finally, and perhaps most egregious of all, the proposal offers a sham separate affiliate that is exempt from Section 251(c)'s requirements and, more generally, from most regulation. Not only is such a condition an attempt to pre-judge the Commission's Section 706 proceeding, it is a barely veiled end-run around Section 10(d)'s ban on forbearing from applying Section 251(c). Each of these conditions actively fosters preservation of the Applicants' circuit-switched voice monopoly at the expense of competition for innovative, more efficient technologies.

1. *Loop Information Availability.* While the parties commit to allow competitors access to the same loop pre-qualification and qualification information that is available to their retail affiliate, the details of what information they actually plan to supply affiliated and non-

affiliated carriers alike are insufficient to allow a CLEC to determine whether it is economically feasible to offer xDSL to a particular end user from a given central office. As Level 3 points out, the proposed condition is "premised on assuring that SBC/Ameritech will not experience any competitive disadvantage in making pre-qualifying loop information available and that it will be required to do so only in a manner consistent with its own marketing plans." Level 3 Comments at 9.

A comprehensive loop information database is critical to the deployment of advanced services. Further, such databases are in place today: ICG indicates that this type of information, including "wire center information, taper code, equivalent 26 gauge, bridge taps, load coils, repeaters, DAMLs (Digital Add Main Line) and digital loop carriers," is present in the databases "that underlie [SBC's] CPSOS and similar systems, but [that] much of the underlying data bases are masked from viewing by CLECs." ICG Comments at 13.[4] Failing to require the Applicants to provide competitors access to loop pre-qualification information is tantamount to guaranteeing that the RBOCs will leverage their existing monopoly into the advanced

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[4] Until SBC "develops and deploys enhancements to its existing Datagate and EDI interfaces," it offers to provide CLECs interim access to CPSOS. Proposal ¶ 16.a. However, the proposed access is not required until six months after closing and does not extend to the underlying databases identified by ICG.

services arena as well. *See* Nextlink Comments at 31-33 (loop data must be made available immediately).

2. *Loop Conditioning Costs.* As demonstrated by Sprint's comments and the declaration of Carl H. Laemmli, SBC's proposed loop conditioning rates are inconsistent with a forward-looking cost methodology and in any event are grossly overstated. Sprint is not alone in this observation; other carriers voice identical concerns. For example, ALTS notes that the charges could not be based on actual cost and do not reflect any economies of scale that would no doubt result if the Applicants were conditioning entire areas for xDSL offerings. ALTS Comments at 15; *see also* ICG Comments at 13 ("The 'interim' rates proposed in Attachment C of the plan appear grossly excessive and shall be subsequently reduced or eliminated."). Covad indicates that "[i]n several SBC and Ameritech states, no charges are assessed for conditioning these loops, a result consistent with the Commission's TELRIC pricing rules," and that "Commission acceptance of this proposal would be a considerable step backwards." Covad Comments at ii. Rhythms Netconnections reveals that SBC's non-recurring rates "have been rejected by every state commission to examine them." Rhythms Netconnections Comments at 7. MCI further confirms Sprint's conclusion that any such costs are likely due to non-standard network design: "To the extent that SBC and Ameritech's loop plant does not conform to well-established engineering practices, SBC and Ameritech

should bear the costs associated with bringing the non-standard plant to accepted design for analog POTS loops." MCI WorldCom Comments at 40.[5]

Sprint respectfully urges the Commission to make clear that TELRIC dictates that ILECs may not recover non-recurring loop conditioning costs. Alternately, the Commission should reject SBC's rates, which are not supported by a shred of record evidence.[6] At the very least the Commission must exercise caution to insure that it does not "let itself be had" by monopoly carriers that have far more pieces of a complicated puzzle than are available to the agency. The Commission should, as Chairman Kennard has indicated elsewhere, commit to at least "do no harm" and excise all mention of interim loop conditioning rates: "In a[n advanced services] market developing at these speeds, the FCC must follow a piece of advice as old as Western Civilization itself: first, do no harm. Call it a high-tech Hippocratic Oath."[7]

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[5] Nor is SBC (or its separate affiliate) required to impute these charges to its DSL rates.

[6] To the extent that the Commission decides that it is appropriate to adopt loop conditioning rates in this proceeding, Sprint urges the Commission to adopt Sprint's proposed rates, as detailed in Mr. Carl H. Laemmli's sworn declaration.

[7] Remarks by Chairman Kennard before the FCBA Northern California Chapter, San Francisco, California, July 20, 1999, at 4.

3. *Sham Separate Affiliate.* SBC proposes to establish a separate advanced services affiliate that will purportedly ensure that the parties treat all CLECs no worse than they treat their own affiliate. The proposal is pitched as a Section 272 separate affiliate. Proposal ¶ 27. As noted in the pending Section 706 docket, where this precise issue has been fully briefed and awaits Commission action,[8] Sprint is fundamentally opposed to allowing an ILEC to use an advanced services affiliate to avoid its obligations under Section 251(c).[9]

Even if one could ignore the problem of impermissibly forbearing from enforcement of Section 251(c), closer inspection of the Applicants' proposed subsidiary structure reveals just how thoroughly the Act's separate affiliate requirements have been gutted.[10] This fact is echoed by other commenters. For example, GST, KMC, Logix and RCN contend that even if the proposed requirements precisely

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[8] Numerous carriers complain that the proposal effectively prejudges key issues in the Section 706 proceeding. *See, e.g.*, Level 3 Comments at 10; CompTel Comments at 23-24 & n.42; GST, KMC, Logix and RCN Comments at 7.

[9] *See generally* Deployment of Wireline Services Offering Advanced Telecommunications Services, CC Dkt. 98-147, Sprint Corp. Comments at 5-8 (filed Sept. 25, 1998) (but for an ILEC's decision to assign part of its business to an affiliate, "those opportunities would remain within the purview of the ILEC" and subject to its Section 251(c) obligations).

[10] The proposal is also infirm in that it freezes Section 272's requirements as of July 1, 1999. Proposal ¶ 27.

mirrored those of a pure Section 272 separate subsidiary -- which they do not -- problems with the proposal would not be cured because a fundamental precursor to such an arrangement, i.e., "satisfy[ing] the rigorous condition of Section 271," is missing. GST, KMC, Logix and RCN Comments at 8.

Even those CLECs that conceptually favor a separate subsidiary voice similar concerns. Covad explains that the affiliate is being granted special rights and privileges that will provide it "an immediate and sustainable competitive advantage." Covad Comments at 37. NorthPoint concludes that, absent certain revisions and a strict construction of the nondiscrimination requirements governing the affiliate-ILEC relationship, the parties will be able to use the arrangement to "leverage their dominant position in the voice market to gain an anti-competitive advantage in the advanced services market". NorthPoint Comments at 8-9. According to Rhythms Netconnections, the proposal "emasculate[s] corporate separation [and] is directly inconsistent with the conclusion that the Conditions make the proposed SBC/Ameritech merger in the public interest." Rhythms Netconnections Comments at 14-15.

The effect of the proposed conditions could not be clearer: they enable SBC/Ameritech to gain a substantial -- and potentially irreversible -- jump-start on competitors in offering advanced services. As technology evolves and the ratio of voice to data traffic continues to steadily

diminish, advanced services may well become the predominant medium for originating and terminating today's conventional services. Allowing SBC to avoid a cornerstone of the Act -- Section 251(c) -- in its affiliate proposal would ultimately enable SBC to move those conventional services from the regulated entity to an unregulated separate affiliate.[11] Rather than increasing the deployment of advanced services, the separate affiliate proposal heightens SBC's ability to stymie CLECs' roll-out of competing advanced services' offerings and exacerbate, rather than alleviate, the anticompetitive effects of the merger.

IV. Virtually Every Condition Proposed Has Been Demonstrated to Disserve the Public Interest.

Beyond the specific set of issues relating to advanced services, the adoption of virtually every other proposed condition has been also shown to be ill-advised. While most commenters have appropriately recognized and commended the hard work done by the staff, they nevertheless conclude that the conditions either do not do enough, or worse, that they do more harm than good. Many also note the short duration of the obligations, the vagueness (or worse) of the terms, and the absence of pre-closing implementation requirements.

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[11] *See, e.g.*, AT&T Comments, App. A at 54 (Applicants could use affiliate to construct "shadow network" and deny CLECs these UNEs and services under Section 251(c)). Moreover, SBC's definition of "advanced services" is broader than the Commission's and would encompass services currently available over today's ordinary copper loops as well as voice-over-IP. *See id.*; Level 3 Comments at 13.

Overall, the opposition is universal. It extends from CLECs to consumer groups to state regulators.[12] Even a cursory overview of the SBC package and the respective comments reveals glaring systemic problems. Numerous illustrations of such problems -- but by no means a comprehensive list -- are included in Appendix 1.

V. Conclusion

The conditions that the Commission has before it look like they could have been written by SBC/Ameritech itself. This is not surprising because they have, in fact, been written by SBC/Ameritech and that is the origin of the problem here. What we have is a faulty process yielding faulty results. The goal was to negotiate with the merging monopolists so that they would yield concessions to ameliorate the admitted anticompetitive problems associated with their merger. This might have been a possible approach if the Commission staff actually had some leverage over the merging entities. But, in the absence of such leverage, the result was all too predictable. SBC/Ameritech was able to cynically manipulate the Commission's procedures. The proposed conditions now before the Commission are put forth by SBC/Ameritech not as concessions but rather in an effort

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[12] Indeed, it is telling that no other ILEC interests (including those with their own transactions pending, Bell Atlantic, GTE, U S West, Cincinnati Bell) have stepped forward to express any concern over how "stringent" the conditions might be. *See generally* BellSouth Comments (commenting only on Section 271 implications).

to establish precedents intended to advance anticompetitive goals that each has long held and fought for in other important proceedings both at the FCC and before the states. The Commission should not allow the SBC/Ameritech effort to succeed.

Sprint respectfully urges the Commission to deny the proposed SBC/Ameritech merger and discard SBC's proposed merger conditions *in toto*. In the event that the Commission concludes that it cannot reject the merger outright, Sprint urges the Commission to begin the process of crafting conditions anew with public input. Alternately, the Commission should approve the merger unconditioned rather than accept SBC's proposed conditions.

Respectfully submitted,

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The following constitutes a sampling of problems with the SBC/Ameritech proposed conditions, as identified by commenters in their July 19 filings with the Commission in CC Docket 98-141.

- **Federal Performance Parity Plan.** *See* Time Warner Telecom at 3-4 (proposed performance measures are so aggregated as to prevent effective monitoring); Indiana URC at 5 (proposal is too complex to implement and enforce); CTC Communications Corp. at 8 (SBC should implement performance parity in Connecticut at same time as other states); MCI WorldCom, Inc. at 13-25 & Attachment 1 (identifying a laundry list of problems with the parity plan, including inadequacy of measurements and penalties, flaws in the Applicant's z-value for benchmarks, and problems with timing and process); ICG Communications, Inc. at 6-10 & Attachments 1-2 (outlining deficiencies of 20 proposed parity measurements and noting that structure of penalties discriminates against smaller CLECs); NorthPoint Communications, Inc. at 26-29 (describing numerous modifications necessary to make measures more comprehensive and rigorous).

- **Collocation Compliance Plan.** *See* Level 3 at 3-6 (audit provisions do not provide for independent auditor, cannot substitute for regulatory oversight and enforcement, and scope of audit must be decided pre-closing); Allegiance Telecom, Inc. at 3 (need for continued audit of Applicants' collocation compliance "until deemed complete and reliable"); ALTS at 10-11 (recommending an 18-month audit period and Commission approval of scope and boundaries of audit); ICG Communications, Inc. at 14 (discussing problems with proposal, including lack of FCC approval of audit requirements, insufficient length of audit, and confidentiality of audit report).

- **OSS: Enhancements and Additional Interfaces.** *See* TDS Metrocom *passim* (describing OSS problems with Ameritech at length; OSS must be accomplished satisfactorily before merger); Time Warner Telecom at 6-8 (purported commitments to upgrade OSS on a uniform basis are missing key areas of interconnection and in any event offer endless opportunities for delay); NorthPoint Communications, Inc. at 24-25 (implementation time frames uncertain and likely to result in substantial delays); CoreComm Ltd. at 5-7, 10 (describing deficiencies and need for independent third party testing); Citizens Action of Illinois *et al.* at 2 (independent OSS testing necessary prior to in-region interLATA entry); Allegiance Telecom, Inc. at 5-7 (OSS proposal "reveals a schedule packed with opportunities for delay at little or no cost" and "affords the company months and even years to finally fulfill its current obligations"); ALTS at 13-14 & n.20 (Applicants should not be able to eliminate OSS enhancements after three years and such enhancements must first be subject to independent third party testing).

- **OSS: Waiver of Charges.** *See* ALTS at 14 (commitment to waive charges "appears to be of no consequence"); MCI WorldCom, Inc. at 36 (proposed condition produces little public interest benefit because OSS charges under TELRIC should be close to zero); Nextlink Communications, Inc. and Advanced Telcom Group, Inc. at 28 (pledge to waive charges is illusory at best because allowing ILECs to charge CLECs for non-electronic processes, when the goal is seamless, electronic interaction, destroys an incentive for the ILEC to solve OSS problems).

- **OSS: Assistance for Small CLECs.** *See* Level 3 at 7-8 (assistance commitment not adequate since it would be available, as a practical matter, for a period of 10 months only); CoreComm Ltd. at 10-11 (training will not be useful until uniform OSS fully deployed); CompTel at 34 (revenue ceiling for proposed condition is so low it excludes many small CLECs).

- **xDSL and Advanced Services Deployment.** *See* Level 3 at 8-10 (loop data availability should not be tied to affiliate's particular needs); NorthPoint Communications, Inc. at 22-24 (noting CLEC need for numerous data at pre-order stage); American Public Power Association *passim* (conditions will not adequately promote competitive xDSL services in rural areas; describing SBC's efforts to foreclose competition from rural electric utilities); Wisconsin PSC at 7 (paragraphs 21-23 non-discrimination duties should not enable SBC/Ameritech to adopt worst OSS level and apply it to all states); id. (interim rate levels for line conditioning, line sharing and OSS discounts "appear to intrude into areas of local exchange service provisioning subject to price setting by the states"); Low Income Coalition at 3 ("[T]he specific anti-redlining and the enhanced lifeline proposals are so seriously flawed that the value of each is in doubt. As written, they are little more than window dressing, extending some public interest cover to these companies without doing anything substantive to address the very real problems they purport to address."); Stockyard Area Development Association *passim* (echoing Low Income Coalition's concerns).

- **Structural Separation for Advanced Services.** *See* TDS Metrocom at 7-8 (describing experience with Ameritech-Wisconsin; separate affiliate structure will not ensure non-discriminatory, competitive environment for xDSL services); Level 3 at 10 (xDSL services of separate affiliate must be subject to section 251(c)(4) resale requirement); CoreComm Ltd. at 13 (same); Time Warner Telecom at 8-12 (structural separation for advanced services is likely only to harm, not promote, competition in advanced services); Telecommunications Resellers Association at 8-24 (separate affiliate provisions are inadequate and unlawful); Wisconsin PSC at 8 (discussing unclear relationship between Section 706 proceeding and proposed conditions); Indiana URC at 9 (finding it unlikely that Ameritech Indiana will honor its commitments unless subject to threat of financial penalties); ICG

Communications, Inc. at 17 (greater risk of abuse due to weakness of affiliate structure where markets are not yet open).

- **Shared Transport.** *See* MCI WorldCom, Inc. at 46-47 (shared transport condition merely requires SBC and Ameritech to meet existing legal requirements; moreover, there should be no netting or collection of access fees by SBC/Ameritech where a CLEC serves its end-users using shared transport); CompTel at 19 (proposal offers nothing more than compliance with current law).

- **Offering of UNEs.** *See* AT&T, App. A at 75-78 (UNE access commitments last only until existing interconnection agreements expire, typically in late 1999 or first quarter 2000); CoreComm Ltd. at 17 (criticizing proposal's reliance on UNE commitment letters); MCI WorldCom, Inc. at 48-49 (Commission should ensure that CLECs purchasing UNEs obtain the same intellectual property rights as ILEC).

- **Carrier-to-Carrier Promotions.** *See* Cable & Wireless USA at 6-7 (UNE-P quantity, use and duration limitations are anticompetitive); CoreComm Ltd. at 18-20 (same); TOPUC at 8 ("[T]he proposal seems designed to funnel money to specific carriers that already use UNEs."); ALTS at 23 (unreasonable limitations on discounted loops); CompTel at 7-18 (service and class restrictions and other limitations on UNE-related proposals are discriminatory and violate numerous provisions of the Act and the Commission's regulations); MCI WorldCom, Inc. at 51 (describing "smoke and mirrors" aspect of promotions, including lack of application to NRCs, endowing SBC/Ameritech with excessive flexibility to manipulate availability of discounts, and self-grant of authority to SBC/Ameritech to audit compliance of CLECs).

- **Alternative Dispute Resolution.** *See* Indiana URC at 10 (stating that process adds no value and may enable Ameritech Indiana to stall development of local competition); Covad at 62 (identifying need for multi-state mediation option); AT&T, App. A at 91-92 (proposal is limited to mediation, which constitutes little more than a requirement that SBC/Ameritech "talk" to CLECs).

- **Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements.** *See* Metromedia Fiber Network Services, Inc. at 7-9 ("best practices" obligation should extend to <u>any</u> interconnection agreement to which SBC/Ameritech is a party); CTC Communications Corp. at 6-7 (same); TOPUC at 9 ("SBC voluntarily negotiates only on issues that do not pose a serious threat to its monopoly position."); Indiana URC at 6 ("<u>all</u> interconnection agreements . . . should be subject to the Most-Favored-Nation status") (emphasis in original); Allegiance Telecom, Inc. at 8-9 ("allegedly beneficent most-favored-nation provisions, upon closer examination are discovered to be mined with clauses which render them nearly worthless"); ICG Communications, Inc. at 15-16

(MFN should apply to pre-merger contracts of both SBC/Ameritech without any requirement that CLECs accept "reasonably related terms and conditions" and regardless of whether arbitrated or negotiated); ALTS at 24-25 (in-region MFN violates the intent of Section 252(i), while out-of-region MFN should apply to all arrangements and UNEs regardless of whether they have been previously made available to other CLECs by that ILEC).

- **Regional Interconnection and Resale Agreements.** *See* Time Warner Telecom at 16-17 (services and functionalities are described too vaguely, inevitably inviting litigation over scope of obligation); ALTS at 26 (several changes are needed to give condition "any real meaning"); Nextlink Communications, Inc. and Advanced Telcom Group, Inc. at 15 (SBC has made clear that the model "proposed" interconnection agreement resulting from extensive negotiations between SBC, the Texas commission and CLECs will not be available on a region-wide basis pursuant to this proposal).

- **Access to Cabling in Multi-Dwelling Unit Premises ("MDUs").** *See* WinStar/Teligent at 5-6 (if an intra-building cabling condition is to be meaningful, it must "require SBC/Ameritech to locate the demarcation point for all multi-tenant buildings in which it maintains a presence at the [minimum point of entry] and to permit CLEC interfaces at that point"); Optel, Inc. at 3 (proposed condition is "little more than window dressing and, because it likely will occasion further delay by SBC and Ameritech in dealing with the substance of the MDU access problem, actually may be counter-productive"); CompTel at 35 (restrictions on offer make it "close to useless as a practical matter"); ALTS at 26-28 (proposed condition pays "lip service" to competitors' needs but details and timelines render it inadequate; also, the section regarding newly constructed or retrofitted buildings violates existing Commission rules).

- **Enhanced Lifeline Plans.** *See* Parkview Areawide Seniors, Inc. ¶ 7.d. (lifeline conditions must be made explicit and specific otherwise Ameritech will do as it has done in the past -- construe them as no obligation at all); Low Income Coalition at 3 (describing enhanced lifeline proposals as seriously flawed); Stockyard Area Development Association *passim* (echoing Low Income Coalition's concerns).

- **Out-of-Region Local Services (National-Local Strategy).** *See* Texas Rural Municipal Electric Utilities at 7-10 (rural communities excluded from promise to compete out-of-region); Indiana URC at 10 (NLS-related penalties should be remitted back to end users in SBC/Ameritech states); AARP at 4 (questioning SBC's commitment to pursue out-of-region residential customers); MCI WorldCom, Inc. at 59 (proposed offering requirement is meaningless because SBC/Ameritech is only required to offer, not competitively price, its NLS services); AT&T, App. A at 100-104

(discussing abridged nature of NLS in comparison to the Applicants' earlier commitments).

- **Verification of Compliance.** *See* Wisconsin PSC at 6 (states should be involved in compliance planning and audit process); Indiana URC at 6 (same); Citizens Action of Illinois *et al.* at 3 (all compliance plans must be filed prior to merger closing, and SBC should not enjoy in-region interLATA entry until liquidated damages provisions are operative); Covad at 67-69 (identifying a need for the compliance audit to be open to public scrutiny).

- **Enforcement.** *See* ALTS at 4 & n.5 (penalties are often so low as to provide no incentive at all; moreover, chance of larger penalties being imposed is "extremely unlikely"); MCI WorldCom, Inc. at 61 (proposal must clarify that the conditions do not affect the Commission's Section 208 enforcement authority or state commissions' authority); Covad at 67 (proposing a $1 billion performance bond to ensure compliance).

- **Sunset Provisions.** *See* CoreComm Ltd. at 24 (three year sunset is insufficient to counter anticompetitive effects of merger); Covad at 3 ("Once the caveats and contingencies are finally satisfied, the conditions will expire almost immediately and all this work will be for naught."); NorthPoint Communications, Inc. at 18-19 (sunset provisions for line sharing are too short and in any event should be tied to commencement of line sharing obligations); Rhythms Netconnections, Inc. at 16 ("the most unequivocal of all the Merger Conditions' terms is the certainty that they expire").

- **Effect of the Condition/Section 271.** *See* Level 3 at 18 (compliance with conditions is highly relevant to merits of Section 271 applications); Indiana URC at 10 (explaining that Commission's conditions must not operate as a ceiling for state-imposed conditions); Ohio PUC at 3, 5 ("[T]he conditions resulting from the Ohio proceeding [must] be effective independent of any FCC-imposed conditions. . . . [otherwise] the Ohio Commission may have to revisit or simply withdraw its approval of the merger."); Wisconsin PSC at 4 (concerned that enforcement mechanisms "may preempt or supersede this state authority or unnecessarily cause blurring of appropriate jurisdictional boundaries"); KCC *passim* (identifying a number of procedural and implementation ambiguities).

CERTIFICATE OF SERVICE

I, Trisha McLean, do hereby certify that on this 26th day of July 1999, copies of the attached Reply Comments of Sprint Communications Company L.P. filed today with the FCC in CC Docket No. 98-141 were served by first class mail, postage prepaid, or hand delivered as indicated, on the following parties:

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